



Final Regulation Agency Background Document

Agency name	Virginia Department of Transportation (Commonwealth Transportation Board)
Virginia Administrative Code (VAC) citation	24 VAC 30-91
Regulation title	Subdivision Street Requirements
Action title	Promulgation of Replacement Regulation to 24 VAC 30-91-10 (Subdivision Street Requirements)
Document preparation date	October 15, 2004

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This regulation sets forth the requirements applicable to all subdivision streets in the Commonwealth that are designated to become part of the secondary system of state highways, including procedures for approval and criteria used to consider the acceptance of new streets for maintenance as part of the secondary system. (Note: This regulation does not apply to the counties of Arlington or Henrico, but may apply in the independent cities or towns of more than 3,500 population, pursuant to §33.1-41.1, Code of Virginia.)

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On September 16, 2004, the Commonwealth Transportation Board (CTB) approved the replacement regulation 24 VAC 30-91-10 et seq. (Subdivision Street Requirements), and repealed the existing regulation 24 VAC 30-90-10 et seq., under the same title.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

No federal statutes pertain to the regulation. Title 33.1 of the Code of Virginia contains many statutory references to the secondary system and the authority to issue regulations. VDOT, the Commissioner and the Commonwealth Transportation Board (CTB) are granted "control, supervision, management, and jurisdiction" over the secondary system of state highways by § 33.1-69. Furthermore, the CTB has general authority to make regulations concerning the use of the state highway system pursuant to § 33.1-12. § 33.1-229 gives the Commissioner discretionary authority over the expenditure of state funds for the secondary system. Finally, new connections of subdivision streets to the various systems of state highways are considered to be commercial entrances and persons desiring to connect new streets to any highway system under VDOT jurisdiction must obtain permits from VDOT for a commercial entrance pursuant to § 33.1-198.

The Office of the Attorney General (OAG) affirmed these statutory references in correspondence to VDOT in 1995, when the regulation last underwent a full-scale Administrative Process Act (APA) amendment. The certification letter the OAG prepared in conjunction with these revisions as proposed (dated January 5, 2004) reaffirms these references. More generally, Section 15.2-2240 of the Code of Virginia requires each locality to enact an ordinance to ensure that land is subdivided and developed in an orderly manner. The Catalog of State & Federal Mandates on Local Governments includes the Subdivision Street Requirements as a mandate (STO.VDOT009). In September of 1999, pursuant to the requirements of Executive Memorandum 1-98, the Secretary of Transportation submitted a recommendation to the Commission on Local Government that the mandate be retained. This regulation does not exceed the specific minimum requirements of any federal or state mandate.

Statutory text for the Code sections reference above can be accessed via the following website:

<http://leg1.state.va.us/000/src.htm>

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The *Subdivision Street Requirements* are generally updated every five to seven years. The last amendments became effective January 1, 1996. VDOT believes that revisions to the regulation are essential to maintain the integrity of the State Highway System by ensuring an accurate and current regulation that provides for the construction of safe and durable streets and ancillary facilities within that system. The regulation will continue the ability of the private sector to develop tracts of land and construct related roads that complement existing and future road systems, traffic patterns, and land use.

The provision of an adequate transportation system is one of the most important functions of government in providing for the safety and welfare of citizens. Within the Commonwealth, public highways continue to play the principal role in this function.

Today, ever-increasing competition between states for new economic development dictates that Virginia continue to provide an efficient highway system, including quality means of access to connect new homes and businesses to the existing highway systems. Further, to promote improved quality of life for the citizens and the effective movement of people, goods, and services, a durable highway system is essential. The provision of a safe and adequate means of access to residential, commercial, industrial and mixed-use developments is an essential quality of life element that Virginians expect and demand. These principles apply to both existing, as well as new streets and roads.

Accordingly, it is imperative that any new transportation facility be designed and constructed to adequately and safely accommodate the anticipated type and volume of traffic, consistent with the land use served. Since the projected resources of the Transportation Trust Fund will be required to finance needed improvements to the existing transportation facilities, the cost of new roads required to serve subdivisions and other similar types of speculative development must be provided from private sources and be sufficient to meet the anticipated transportation needs of the Commonwealth. VDOT believes that the revisions to the regulation will make it more useful in meeting the goals of local government and ensuring a safe and adequate means of access is provided as part of local land development activities.

These alternatives are intended to improve the regulation while continuing to meet the principal goals of:

- Serving as a reference resource for parties involved in the planning, design, development, and regulation of residential, commercial, and industrial subdivisions.
- Establishing the minimum criteria for the addition of subdivision streets as a part of Virginia's secondary system of state highways.
- Protecting the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens of the Commonwealth.
- Providing a clearly written and understandable regulation.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The Commonwealth Transportation Board's "Policy for Integrating Bicycle and Pedestrian Accommodations" was added as a reference. However, the provisions of the regulation impose no burden on the developers of new subdivision streets, but the related changes emphasize the need to accommodate anticipated bicycle and pedestrian traffic, as outlined in the policy. Otherwise, no substantive amendments have been made to the document released for public comment.

As a result of public comment and subsequent review, however, it became apparent that several provisions could be re-organized and combined to provide a more logical grouping of related or similar provisions. This re-organization constitutes the majority of the changes in the document. Other changes focus on rewording to clarify provisions either in association with the re-organized document or in response to public comments. Also, on-going internal structural changes within the agency required modifications of several agency positions referenced within the regulation. These changes have been done in a manner that will provide a seamless transition of position authority as internal agency functions are reassigned.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

Issues include the following:

1) The primary advantage to the public from the replacement regulation is the emphasis on providing an up-to-date and more flexible regulatory resource for local governments, developers, and others to use. The Subdivision Street Requirements replacement regulation removes design criteria from the regulation and makes them a part of the Department's Road Design Manual (Appendix B), which appendix will become effective with the implementation of the revised Subdivision Street Requirements

In addition, these changes will provide a more comprehensive approach to the development of new streets and will allow greater traffic volumes to use the narrower street widths, which results in an overall reduction of standards with the potential to lower the cost of development of many streets. Additional guidance is provided to clarify and broaden development and acceptance issues related to streetscaping, the placement of utilities within public rights of way, the acceptance of certain pedestrian tunnels, and the acceptance of sidewalk and bicycle facilities as integral parts of new streets. The minimum service criteria governing eligibility for the acceptance of streets is clarified. Additionally, definitions used to administer the regulation have been revised, consistent with changes within the Department, and new ones added (e. g., "parking bays") to provide greater clarity or technical information to the user.

The only disadvantage to the public is in getting acclimated to the replacement regulation. However, since the contents of the replacement regulation were developed in concert with stakeholder input and the active involvement of local government officials and representatives of the land development industry, during and after the NOIRA period, VDOT believes that the revisions will be acceptable. Updating VDOT's maintenance fees and surety and providing for the recovery of VDOT's administrative costs may be considered a disadvantage since this will be an additional cost to the developer. However, reduced construction costs are expected to offset those increases.

2) The primary advantage to VDOT and the Commonwealth is essentially the same as that to the public – the replacement regulation provides an up-to-date and clarified resource concerning the development of quality street systems for users, including VDOT personnel. VDOT will be able to perform its mission with greater efficiency and effectiveness, while addressing the concerns of stakeholders and the land development industry.

Other advantages to VDOT include an update of the surety and fees to help offset VDOT's costs. The only disadvantage to the agency or the Commonwealth is in the time and expense to VDOT to implement the changes, through a combination of training and printing the replacement regulation, etc.

3) Any pertinent matters of interest to the regulated community, government officials, and the public will be addressed as a result of the promulgation of the final replacement regulation and the repeal of the existing one through the Administrative Process Act.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

Amendments have been made since the proposed version was published, resulting from internal or external input.

In general, amendments were made to promote clarity, consistency and accuracy, to eliminate redundant or obsolete text, to provide updated references, and to consolidate related provisions. Throughout the document, minor editorial changes were made to clarify intent, ensure consistency in terminology, with some definitions added or modified. None of these changes are expected to pose additional costs to the regulated parties.

The most substantive change to the regulation emphasizes the Commonwealth Transportation Board's recently adopted "Policy for Integrating Pedestrian and Bicycle Accommodations." Language was added to ensure alignment of the regulation and this policy and to clarify maintenance responsibility. Also, language was modified in the section on Pedestrian, Bicycle and Shared Use Path Facilities section to address public comments.

The section addressing the crossings of dams was reworded and reorganized to clarify VDOT's expectations when a road is constructed on or in the immediate vicinity of a dam. The new table of contents is included with the draft regulation. Two provisions in the draft published for comment (Section 110-Applicable Requirements of regulatory agencies and Section 260-Noise Abatement) were eliminated because they were found to be obsolete and without impact within the context of the regulation.

The existing Subdivision Street Requirements (24 VAC 30-90-10 et seq.) is being repealed and proposed 24 VAC 30-91-10 et seq., fully replaces the current regulation. Consequently, the changes proposed constitute amendments to a proposed regulation that is not yet in force. The following Internet link provides access to a comprehensive listing of the changes to the document since the public hearing phase and provides a comparison to the current regulation:

http://www.virginiadot.org/projects/resources/CTB-SSR_Amends.pdf

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

VDOT compiled 346 comments from 37 authors addressing both the proposed regulation and the related Subdivision Street Design Guide, which is a design reference setting forth the minimum acceptable engineering criteria for the design of new streets and is not a regulatory document.

A significant number of comments on the regulation addressed pedestrian and bicycle facilities. These comments suggested additional language highlighting the Commonwealth Transportation Board's Policy for Integrating Pedestrian and Bicycle Accommodations. Additional language has been added to emphasize this policy and provide alignment with applicable provisions.

Most comments received that addressed the regulation suggested editorial or clarification changes, and most were incorporated. There were several comments that were primarily asking a question and those were answered in the summary of comments and responses VDOT provided, which can be accessed through the link below. There were also comments requesting more specifics on design criteria and those were addressed in the design guide. There were some comments that addressed issues beyond

the scope of this regulation. A response was made indicating this fact in the summary of comments and responses.

All comments were reviewed and addressed based on discussions with the Advisory Committee. All comments and VDOT's responses are available for review at the following Internet link:

<http://www.virginiadot.org/projects/resources/SSRProvisionReport.pdf>.

Everyone providing comments received notice of VDOT's publication of this report over the Internet and was provided the identification number assigned to their comments in order for them to locate VDOT's response. This report was produced in two formats, one with comments and responses grouped by comment author and the other (referenced above) grouped comments by document (the SSR or the Design Guide) and then by regulatory provision or, in the case of the design guide, by subject area.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Parts of the existing regulation have been retained in the proposed regulation and its final version, but have been relocated or amended to improve clarity and understandability. Other parts have been amended as a result of input from VDOT staff, the public, developers, or local governments. Two provisions were deleted altogether. The file included under the section "Changes made since the proposed stage" describe these changes in detail.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

This regulation is not expected to have any detrimental effect on family or family stability. To the contrary, the regulation is expected to promote motorist and pedestrian safety within subdivisions and will relieve homeowners associations of the burden of having to maintain the streets they rely upon to access their homes and places of business; which the Department believes are important factors that help to preserve family stability.